

KAHS510001332024



Presented on : 11-01-2024
Registered on : 11-01-2024
I.A.No.II Decided on : 16-04-2024
Duration: 3 Months 5 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C.,_B.A.L.,LL.B.
Civil Judge and JMFC, Belur.

Dated this the 16th day of April, 2024

O.S./29/2024

Between:

Sri. Mallesha G.C.,
S/o late Girigowda,
Aged about 50 years,
R/at Cheelanayakanahalli,
Halebeedu Hobli, Belur Taluk,
Hassan District.

..Plaintiff

(Sri. S.N. Chandra, Advocate for Plaintiff)

And:

Sri. Venkataiah,
S/o Late. Annappa,
Aged about 80 years,
R/at Cheelanayakanahalli Village,

Halebeedu Hobli, Belur Taluk,
Hassan District.

..Defendant

(Sri. H.C. Kiran Kumar, Advocate for Defendant)

PARTIES TO THE APPLICATION IA NO. II

Sri. Mallesha G.C.

.. Plaintiff/Applicant

V/s

Sri.Venkataiah

..Defendant/Opponent

Provisions of Law of I.A.No.II	Under Order 39 Rule 1 and 2 r/w sec. 151 of Civil Procedure Code
Relief sought for on I.A.No.II	Temporary injunction against the defendant
Date of application	04.12.2024
Number of the application	2
Date of objection filed by defendant	26.02.2024
Date of order	16-04-2024

ORDERS ON I.A. No.II

This application is filed by the plaintiff against the defendant along with the suit under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code seeking order of temporary injunction to restrain the defendant from interfering with the possession and enjoyment of the plaintiff over the Suit Schedule vacant site property measuring East to West: 40 feet

and North to South: 60 feet, situated at Cheelanayakanahalli Village, Halebeedu Hobli, Belur Taluk, till disposal of the suit.

2. In the affidavit filed in support of the application as well as in the plaint averments, the plaintiff has contended that, the Assistant Commissioner, Sakaleshpura Sub-Division, Hassan District has acquired the land to an extent of 1 Acre 4 guntas in Sy. No.1/3 of Cheelanayakanahalli and accordingly a site measuring East to West: 40 feet and North to South: 60 feet with the boundaries described in the schedule of the plaint was allotted in the name of plaintiff by the Village Panchayath of Halebeedu and khatha was effected in the name of Plaintiff and property number was assigned as Site No.151600403000720024. Ever since the date of grant of suit property the plaintiff is in possession and enjoyment of the same without interference by anybody.

3. It is further contended by the plaintiff that the defendant has interfered with the possession and enjoyment of the plaintiff over suit property on 01.09.2023 and also on 01.11.2023 and in this connection the plaintiff has lodged complaints before the Halebeedu Police Station as well as Superintendent of Police, and they have issued endorsement to the plaintiff to approach civil court stating that the dispute is civil in nature. Further, the defendant herein has also filed a suit in O.S. No.510/2023 before this court for the relief of declaration and permanent injunction

in respect of property bearing Khatha M.R. No.7/1988-89 measuring East to West: 40 feet and North to South: 40 feet of same Cheelanayakanahalli village and has obtained ex-parte order of temporary injunction against the Panchayat Development Officer, Halebeedu Panchayat who is 2nd defendant therein.

4. It is further contended by the plaintiff that, taking advantage of the said order, it is alleged that the defendant again on 10.01.2024 interfered with possession of plaintiff over the suit property alleging that a portion of the suit property is also belongs to the defendant. But the defendant is having no manner of right, title and interest over the suit property and he is interfering only in order to knock of the suit property with an ulterior motive. It is alleged that the defendant is having support of goonda elements and money power. As such, the plaintiff cannot resist the illegal act of the defendant without order of this court. Hence, the plaintiff has filed this suit along with the instant application.

5. The defendant entered appearance through his counsel, filed objection statement to the instant application. In the objection statement, at the outset, the defendant has denied the right, interest and possession of plaintiff over the suit property. The instant suit for mere relief of injunction without the relief of declaration is not maintainable. The grant made by the Grama

Panchayat itself had no right to make such an order in favour of the plaintiff.

6. It is specifically contended by the defendant that he is the absolute owner in title, right, interest, possession and enjoyment of the property measuring East to West: 40 feet and North to South: 40 feet of Cheelanayakanahalli village by virtue of khatha vide M.R. No.7/1988-89. After introduction of Gramapanchayats the Halebeedu Gramapanchayat has made khatha in favour of the defendant as per M.R. No.2/2006-2007. But the defendant being illiterate and without knowledge of extent of his property was wrongly mentioned as East to West: 33 feet and North to South: 66 feet which is illegal and opposed to law. The defendant along with other villagers had filed applications to the local authority for allotment of sites in their favour. As such, the Tahasildar, Belur has allotted the site in favour of the plaintiff and other measuring to an extent of East to West: 40 feet and North to South: 40 feet each and the defendant's name was mentioned at Sl. No.117. Thereafter, the defendant was put in possession of the said site property and khatha was also transferred in his name vide M.R. No.7/1988-89 by the Mandalapanchayat. The defendant has been paying the tax since the date of khatha changed in his name and he has also constructed a residential house.

7. It is further contended by the defendant that, the plaintiff

from past 6 months has been interfering with the possession and enjoyment towards the western side of the property of defendant. As such, for clarification, the defendant has verified the revenue records and such other relevant records which confirmed that, without following any procedural requirements, the plaintiff herein by colluding with the grama panchayat made illegal khatha in favour of the plaintiff vide M.R. No.2/2021-2022 by mentioning as "Possession and as per decision of General Meeting held on 04.03.2023." In the Janatha Scheme, the sites formed measuring 40 X 40 feet, but the grama panchayat without having any right has effected khatha in the name of plaintiff to an extent of 40 X 60 feet which is illegal and opposed to law.

8. It is also contended by the defendant that the government had acquired the property belonging to the family of plaintiff. The government paid compensation to the parties. Then the question of granting site in favour of the plaintiff never arises. The sites were formed and allotted under Janatha Scheme to the site less persons. But the plaintiff has come from Jamindar family. As such, the defendant has disputed the title of the plaintiff. The defendant has also initiated proceedings for cancellation of khatha effected in the name of plaintiff. Therefore, the question of possession of plaintiff over the suit property and alleged interference of the defendant does not arise

at all. Hence, the defendant has sought for dismissal of the suit and consequently the instant application.

9. Basing on the application, affidavit, objection statement of Defendant to the instant application, the following points would arise for consideration of this court.

POINTS

1. Whether the plaintiff has made out prima facie case?
 2. Whether the balance of convenience lies in the favour of the Plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury if the order of injunction as prayed for is not granted?
 4. What order?
10. Heard arguments of both sides. On the basis of Application, affidavit, objection statement of defendant, pleadings and also all the materials available on record, answer of this court to the above points is as under:

Point No.1:	In the Negative
Point No.2:	In the Negative
Point No.3:	In the Negative
Point No.4:	As per final order for the following:

REASONS

11. **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other they are taken up together for discussion in order to avoid repetition of facts.

12. This suit is filed by the plaintiff against the defendant seeking for the relief of permanent injunction to restrain the defendant from interfering with the possession and enjoyment of the plaintiff over the suit schedule property. Identical relief is sought for in the instant application by the plaintiff.

13. At the outset, it is an admitted fact that the property bearing Sy. No.1/3 measuring 1 Acre 4 guntas of Chilanayakanahalli village was acquired by the Government through Assistant Commissioner, Sakaleshpura for the purpose of formation of sites under Janatha Scheme. The plaintiff contended that a site measuring East to West: 40 feet and North to South: 60 feet with the boundaries described in the schedule of the plaint was allotted in the name of plaintiff by the Village Panchayat of Halebeedu and khatha was effected in the name of Plaintiff and property number was assigned as Site No.151600403000720024. The plaintiff has produced the latest E-Swathu khatha of the suit property standing in his name. It is clear from the E-Swathu khatha that as per Resolution of Gram Panchayat dated 23.01.2023, mutation was effected in the

name of plaintiff vide M.R. No.2/2021-2022. But the plaintiff has not produced the said mutation order or the resolution and also not produced any revenue document except tax paid receipt.

14. On the other hand, the defendant has produced the RTC extract for the year 2015-2016 of land bearing Sy. No.1/3 measuring 1 Acre 4 guntas as NA Kharab vide M.R. No.1/1980-81 . It is contended by the defendant that he was allotted with site measuring East to West: 40 feet and North to South: 40 feet by way of Mandalapanchayat khatha vide M.R. No.7/1988-89. The Hissa Survey Atlas is also produced. At Sl.No.117 the name of defendant is appearing in the Demand Register Extract in respect of site property measuring 40 X 40 feet and also in the Form No.10 the name of defendant is appearing.

15. The defendant has further contended that without following any procedural requirements, the plaintiff herein by colluding with the grama panchayat made illegal khatha in favour of the plaintiff vide M.R. No.2/2021-2022 by mentioning as "Possession and as per decision of General Meeting held on 04.03.2023." The defendant has produced copy of the resolution cum the mutation order in M.R. No.2/2021-2022. On the basis of said resolution the defendant has raised questions that, in the Janatha Scheme, the sites formed were measuring 40 X 40 feet, but the grama panchayat without having any right has effected

khatha in the name of plaintiff to an extent of 40 X 60 feet which is said to be illegal and opposed to law. The report/order reads as under:

ವರದಿ: ಅರ್ಜಿದಾರರಾದ ಶ್ರೀಯುತ ಮಲ್ಲೇಶ್ ಬಿನ್ ಗಿರಿಗೌಡ, ಚೀಲನಾಯಕನಹಳ್ಳಿ ಗ್ರಾಮ, ಇವರು ಸ.ನಂ. 01/3 ರ ಜಾಗದಲ್ಲಿ N.A. ಖರಾಬು ಇರುವ ಸ್ಥಳದಲ್ಲಿ ಹಲವಾರು ವರ್ಷಗಳಿಂದ ಅನುಬೋಗದಲ್ಲಿದ್ದು ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗೆ ತೆರಿಗೆ ಪಾವತಿಸಿಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ. ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಿ ಅವರಿಗೆ ಅನುಬೋಗದಂತೆ ಖಾತೆ ಮಾಡಲು ತೀರ್ಮಾನಿಸಲಾಗಿದೆ.

16. Basing on the said report/resolution khatha was effected in the name of plaintiff vide M.R. No.2/2021-2022 in respect of property measuring East to west: 40 feet and North to South: 60 feet. But the plaintiff contradictorily claims that the Assistant Commissioner has acquired the land bearing Sy. No.1/3 measuring 1 Acre 4 guntas for formation of sites under Janatha scheme and site was granted/allotted to him. It is to be noted that the defendant claims that he was allotted with the site under same scheme and his name is appearing in Sl.No.117 as beneficiary. Admittedly, the plaintiff is not a beneficiary under the Janatha Scheme. It appears that the Gram Panchayat has blindly granted/allotted the suit site to the plaintiff without following any due process. Whether the Gram Panchayat had any authority to grant the site measuring 40 X 60 feet is not

forthcoming. The plaintiff has suppressed regarding effecting mutation of suit site in his name by stating that he was one of the beneficiaries of the grant.

17. As per list furnished by the defendant, the grantees were each allotted with site measuring 40 X 40 feet. Later in the year 2006-2007, the khatha was effected in the name of defendant vide M.R. No.2/2006-2007 wherein measurement of his site is mentioned as East to west: 33 feet and North to South: 66 feet instead of East to West: 40 feet and North to South: 40 feet. Accordingly, it appears that the dispute has arose between the parties. It is to be noted that alleged grant of site was made in the name of defendant in the year 1988-89. The khatha was effected in the name of plaintiff in respect of 40 X 60 feet is in the year 2021-2022. As per plaint averments the plaintiff contended that he was granted/allotted with the suit site property and ever since the date of allotment he has been in possession of the suit property. On the contrary, as per resolution/order produced by the defendant, the khatha was effected in the name of plaintiff basing on his previous possession. Therefore, prima-facie the stand taken by the plaintiff in respect of his possession over suit property is inconsistent. As such, the alleged allotment of site by way of effecting khatha in the name of plaintiff itself creates doubt as to possession of the plaintiff.

18. Further, the plaintiff has produced photographs showing that a constructed house is existing. On the other hand, the defendant has also raised question that he is in possession of 40 X 40 feet as per grant by the Mandala Panchayat and not 33 X 66 feet as per khatha in the year 2006-2007 by the Gram Panchayat. Hence, the defendant contended that towards western side of his property alleged to be measuring 40 X 40 feet, the plaintiff herein has encroached upon 7 feet and if the measurement of defendant's site is considered as 33 X 66 feet, the said measurement extends to another land not in Sy. No.1/3. Therefore, alleging interference by the plaintiff herein, the defendant has filed a suit in O.S. No.510/2023 before this court along with I.A. No.III seeking order of temporary injunction. The same is dismissed by this court holding as under:

"16. It is to be further noted that, in view of variations in the measurement of suit property as discussed above, the boundaries described would also change. The plaintiff has not produced any document to show whether E-Khatha has been issued to him or whether he has got constructed a house or any structure therein and if so, under what measurement, etc. are all not disclosed. The plaintiff has not produced single tax paid receipt to show to what measurement of property he has paid tax prior to 2006-2007 and after 2006-2007. Further, the complaint lodged before the

Dy.S.P., Arasikere, is by wife of the plaintiff Smt. Nagamma and not by plaintiff. Even in the Endorsement dated 19.10.2023, the Dy.S.P., Arasikere has directed the PSI, Halebeedu to extend protection at the time of conducting spot inspection and measurement by the gram panchayat. Prima-facie, the same would reveals that the plaintiff is not accurate as to his possession and enjoyment over the suit property. Whether he is in possession of 40 X 40 feet as per allotment or 33 X 66 feet as per khatha effected in the year 2006-2007. The same has to be ascertained only after holding full fledged trial.

17. *Furthermore, there is inordinate delay in approaching either this court or the revenue authorities by the plaintiff seeking declaration before this court and also questioning the khatha effected in his name in the year 2006-2007 in respect of property measuring East to West: 33 feet and North to South: 66 feet. Further, the approach is made by the plaintiff to revenue authorities seeking for measurement of the site property to ascertain whether he is in possession of 40 X 40 feet or 33 X 66 feet. Therefore, without ascertaining the said fact, the allegations made against the 1st defendant in so far as allotting site in his name cannot be considered. The plaintiff has to establish his possession at the first instance. It is not the case of the plaintiff that the site allotted to the 1st defendant is by encroaching upon his property. In order to ascertain possession of 1st defendant, he*

has also filed a suit in O.S. No.29/2024 before this court and the same will be considered independently.

18. *As such, by going through the materials available on record, even though it is not in dispute that the sites were formed and granted to the plaintiff in Sy. No.1/3 of Chilanayakanahalli, the plaintiff has not made out prima facie case that he is in possession of 40 X 40 feet as per alleged allotment. The plaintiff has not produced present documents such as E-Swathu, Tax paid receipts, etc. in order to establish his prima-facie possession as on the date of institution of the suit. The letters and endorsement issued by both the Police Authority and Revenue authority go to show that suitable conclusion will be drawn after measurement of the site property of plaintiff. Without which, at this stage, this court cannot come to proper conclusion. The same would also creates prima-facie ambiguity with regard to description of the suit property comparing to the measurement claimed by the plaintiff and measurement available as per records. It appears that the same has resulted in disputes between the parties. Under the circumstances, it is just and necessary to get it cleared as to in which extent the plaintiff is in possession. Even though the defendants have not disputed about grant of suit property to the of plaintiff, the fact regarding variations in the measurements as claimed by the plaintiff goes to show that the plaintiff is making a claim which is not clear at this point of time.”*

19. In the present case in hand also, the plaintiff though produced document such as E-Swathu as on the date of institution of the suit, the basic question raised by the defendant regarding allotment of suit site property by way of effecting khatha in respect of 40 X 60 feet, prima-facie, needs to be clarified only after holding full fledged trial. This court once again re-iterates that the dual stand taken by the plaintiff that he has been in possession of the suit property since the date of grant/allotment of suit site to him and further that as per resolution/order of gram panchayat khatha was effected in his name basing on his previous possession would also creates suspicions about bonafides in the claim of plaintiff. As such, in order to ascertain all these facts, there is need for holding full fledged trial, without which, prima-facie, at this stage of the suit, this court cannot come to the proper conclusion on this application.

20. Furthermore, the plaintiff has not voluntarily produced the documents through which the suit property was allotted to him, but the defendant has produced the same. As such, the plea of the plaintiff on the basis of which he claims possession over the suit property required to be considered after thorough examination. Further, both plaintiff, defendant and defendant's wife appear to have filed complaints against each other. Therefore, in order to resolve the dispute the case has to be

decided on merits on the basis of evidence. Therefore, at this point of time, this court did not make out prima-facie case from the materials available on record. The letters and endorsement issued by both the Police Authority and Revenue authority go to show that suitable conclusion will be drawn after measurement of the site property of plaintiff and defendant. Under the circumstances, it is just and necessary to get it cleared as to in which extent the plaintiff and defendant are in possession of their respective properties. As such, the balance of convenience is not lying in favour of the plaintiff at this stage. If this court grants order of temporary injunction, the plaintiff may take advantage of the same and cause trouble to the defendant and other site owners. As such, the plaintiff has not established that the suit property is in danger of being wasted by the act of defendant. Hence, the plaintiff is not entitled to the equitable relief of order of temporary injunction as sought for. Therefore, the application filed by the plaintiff deserves to be dismissed. Accordingly, this court answered Point Nos.1 to 3 in the **Negative.**

21. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 r/w section 151 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- The earlier exparte order of temporary injunction passed by this court dated 12.01.2024 against the Defendant stands vacated.

(Dictated to the stenographer directly on computer, transcription corrected by me and then pronounced in the open court, on this the 16th day of April , 2024)

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

16.04.2024

Plff by **Sri. SNC**

Defts by **Sri. HCK**

For Orders on IA-II

(Order on I.A. No.II signed and pronounced in the open court vide separate order)

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 r/w section 151 of Civil Procedure Code is hereby dismissed.
- No order as to costs.

- The earlier exparte order of temporary injunction passed by this court dated 12.01.2024 against the Defendant stands vacated.
- For Written Statement of Defendant by: **10-07-2024.**

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.